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**MAR 31 2006**

In re Application of :  
Hara et al. : **OFFICE OF PETITIONS**  
Application No. 10/695,214 :  
Filed: October 28, 2003 : ON PETITION  
Attorney Docket No. 6872-0001-1 :

This is a decision on the Petition to Claim Benefit Under 35 U.S.C. § 119(e) of Prior Filed Provisional Applications (37 CFR 1.78(a)(6)), filed February 6, 2006, to accept an unintentionally delayed claim for the benefit of the prior filed provisional applications set forth in the Supplemental Application Data Sheet filed herewith.

This Petition is hereby dismissed.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed on October 28, 2003. A review of the wording of the claim for priority in the Application Data Sheet ("ADS") and petition reveals that the wording is improper in that this application cannot directly claim benefit to the provisional applications, since it was filed more than twelve months from the filing date

the filing date of the provisional applications. However, it would be appropriate to claim benefit of the provisional applications through intermediate application no. 10/327,300, since that application was filed within twelve months of the filing date of the provisional applications.

In view of the above, either an amendment to the first line of the specification or a Supplemental ADS correcting the priority claim to the provisional applications, along with a renewed petition under 37 CFR 1.78(a)(6) is required.

Also note that a nonprovisional application does not have to be co-pending with the provisional, but must be filed within twelve months thereof; have at least one inventor in common and have had the filing fee paid.


Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to Attorney Derek L. Woods at (571) 272-3232.

  
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